

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Case No.: 5:07-cv-00210**

BOARD OF LAW EXAMINERS, also known as
North Carolina Board of Law Examiners and as The
Board of Law Examiners of the State of North
Carolina,

Plaintiff

vs.

WEST PUBLISHING CORPORATION and
THE THOMSON CORPORATION,
Defendants

**COMPLAINT
(Jury Trial Demanded)**

Cause of Action

1. This is an action for copyright infringement and related misconduct, brought on account of Defendants' wholesale copying and distribution of copyrighted questions that have appeared on North Carolina bar examinations as part of Defendants' BAR/BRI business.

The Parties, Jurisdiction, and Venue

2. Plaintiff Board of Law Examiners (hereafter NCBLE) is an entity organized pursuant to the laws of the State of North Carolina, and in particular N.C.G.S. §84-24, for the purpose of examining applicants for admission to the Bar of the State of North Carolina and providing rules and regulations for admission to the Bar, including the issuance of license therefor. NCBLE has its only office, and conducts most of its business, in Raleigh, North Carolina.
3. On information and belief, Defendant The Thomson Corporation ("Thomson") is a corporation organized under the Business Corporation Act of Ontario, Canada, having a place of business at One Station Place, Stamford, Connecticut.
4. On information and belief, West Publishing Corporation ("West") is a subsidiary of The Thomson Corporation, is a corporation organized under the laws of the State of Minnesota, is admitted as a

foreign corporation to do business in the State of North Carolina, and has a North Carolina registered agent with an office at 327 Hillsborough Street in Raleigh, North Carolina.

5. On information and belief, Thomson and West, using the trademark, service mark, and fictitious name BAR/BRI, provide bar examination preparation materials and education to persons interested in applying to the Bar of the State of North Carolina, and advertise and promote these products and services to such persons. On information and belief, Thomson and/or West acquired this business as a result of transfer of ownership from and through one or more successive predecessor(s) in interest, and are responsible for the actions of each prior owner undertaken in the conduct of such business. Collectively, Thomson and West, and their predecessor(s) in interest with respect to the bar examination business known as BAR/BRI, hereafter are referred to as BAR/BRI.
6. On information and belief, BAR/BRI's services and products relating to preparation for the North Carolina bar examination are provided primarily to persons located within the State of North Carolina, including persons located within the Eastern District of North Carolina, and are widely advertised and promoted to such persons.
7. As more particularly hereafter set out, this action arises under the copyright laws of the United States of America, 17 U.S.C. §101 *et seq*, This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1338.
8. Defendants are subject to the jurisdiction of this Court because BAR/BRI solicits and/or transacts business in this district on a regular basis, because a substantial part of the events giving rise to the claim occurred in this district and acts complained of herein occurred and are occurring in this district, and because BAR/BRI's conduct has caused harm in this district. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400.

Factual Background

9. NCBLE, as a part of its duties, not only administers the North Carolina Bar Examination but also prepares the essay portion of that examination (hereafter referred to as the Essay Examination).

Each Essay Examination includes numerous essay questions, the precise number of which has varied over time. Presently, each Essay Examination includes twelve essay questions.

10. The process of creating, selecting, and revising the essay questions that comprise the Essay Examinations is a difficult one. It requires among other things substantial knowledge of important issues in North Carolina legal practice, knowledge of areas that are likely to confront new attorneys and in which their competence is likely to be particularly significant in the early years of their practice, a general awareness of the subjects being taught in law schools, and knowledge of how essay questions perform when actually administered in the setting of the North Carolina Bar Examination.
11. As a result, NCBLE has developed a lengthy process through which potential essay questions are created and screened before administration, carried out by members of the Board of NCBLE and of its committees. Members of the Board of NCBLE author many of the essay questions, and questions also are written by members of the NCBLE's Select Drafting Committee. After the questions have been prepared, reviewed, and revised by their respective writers, they are presented to the Drafting Committee of the NCBLE. The members of the Drafting Committee, separately and then in a multi-day meeting, review the pool of potential questions, select multiple questions in each subject area for consideration by the full Board, and review and revise those questions. The questions then are presented to the full Board of the NCBLE, whose members, separately and then in a multi-day meeting, review the potential essay questions that have been selected by the Drafting Committee, choose from amongst those questions certain essay questions that will or may appear on examinations during the coming years, and further revise those selected essay questions before approving them for use. The precise questions that will be used on each Essay Examination are thereafter selected to provide an appropriate balance of length and difficulty.

12. Until 1981, the North Carolina Bar Examination, including the Essay Examination, was administered only in the month of July of each year; since 1981, it has been administered in February and in July of each year.
13. Persons outside the NCBLE and its staff do not know what essay questions may appear on any Essay Examination until after it has been given. After each Essay Examination has been administered, the questions are compiled into a small bound volume, which is circulated on a limited basis by the NCBLE. Beginning with the February 2007 North Carolina Bar Examination, the NCBLE also has published the Essay Examination, along with selected answers, on the NCBLE's website.
14. NCBLE is the owner of all copyrights in its Essay Examinations, including all copyrights in the essay questions that appear or have appeared on each Essay Examination.
15. NCBLE has registered its copyrights in many of the Essay Examinations that it has administered, and has received certificates of registration for certain of these works, while issuance of certificates for others still is pending. Those for which registrations have issued to date (each of which was a compilation of twelve creative essay questions) include:

U.S. Copyright Registration Number	Covering the Essay Examination Administered at the Following North Carolina Bar Examination
TX 6-500-282	February 1982
TX 6-505-968	July 1982
TX 6-505-964	February 1983
TX 6-505-972	July 1983
TX 6-505-956	February 1984
TX 6-500-279	July 1984
TX 6-505-966	February 1985
TX 6-505-965	July 1985

TX 6-500-275	February 1986
TX 6-500-276	July 1986
TX 6-500-277	February 1987
TX 6-500-278	July 1987
TX 6-500-292	February 1988
TX 6-500-294	July 1988
TX 6-500-293	February 1989
TX 6-500-287	July 1989
TX 6-500-296	February 1990
TX 6-500-290	July 1990
TX 6-505-967	February 1991
TX 6-500-298	July 1991
TX 6-500-297	February 1992
TX 6-500-299	July 1992
TX 6-500-280	February 1993
TX 6-505-963	July 1993
TX 6-505-962	February 1994
TX 6-505-961	July 1994
TX 6-505-960	February 1995
TX 6-505-959	July 1996
TX 6-505-958	February 1997
TX 6-505-970	July 1997
TX 6-505-971	February 1998
TX 6-505-969	July 1998
TX 6-505-957	February 1999

TX 6-500-274	July 1999
TX 6-500-285	February 2000
TX 6-500-295	July 2000
TX 6-500-283	February 2001
TX 6-500-291	July 2001
TX 6-498-855	February 2002
TX 6-500-289	July 2002
TX 6-498-856	February 2003
TX 6-500-288	July 2003
TX 6-500-281	February 2004
TX 6-500-286	July 2004

16. These registrations are valid, and subsisting, and are owned by NCBLE.
17. NCBLE has not provided copies of any Essay Examination to BAR/BRI, nor authorized others to do so.
18. Each paragraph of this Complaint is incorporated by reference into each Count thereof as though fully set out therein.

Count One – Copyright Infringement

19. On information and belief beginning at a time in or around 2001 and continuing since that time, BAR/BRI has created, published, distributed, marketed, sold and advertised works that have been copied and/or derived, in whole or in substantial part, from NCBLE's Essay Examinations (hereafter, the "Infringing Works").
20. On information and belief, the Infringing Works include each edition of the North Carolina BAR/BRI bar review course materials that BAR/BRI has distributed and is distributing to persons preparing to take the North Carolina bar examination, since at least as early as 2001. These materials include but are not limited to BAR/BRI's North Carolina Essay Workbook, which is

presently being advertised on BAR/BRI's website and is described by BAR/BRI on its website as containing "over 100 reconstructed NC Bar Exam essay questions."

21. On information and belief BAR/BRI has created and published or publicly performed additional Infringing Works, including course outlines, teaching materials, and lectures relating to the North Carolina BAR/BRI bar review course, the extent of which is not presently known to NCBLE.
22. BAR/BRI has caused lecturers to use its Infringing Works, and has caused students and other prospective applicants to the North Carolina bar to purchase and use copies of the Infringing Works, all for its own profit and/or the profits of its subsidiaries and affiliated companies.
23. NCBLE was not asked to consent to BAR/BRI's activities, and did not authorize or consent to BAR/BRI's use of NCBLE's Essay Examinations or its creation and exploitation of the Infringing Works.
24. The conduct described herein constitutes direct, contributory and vicarious copyright infringement, for which Defendants are jointly and/or severally liable to NCBLE.
25. BAR/BRI, which is experienced in the field of publications and has itself asserted its own copyrights against others, knew or should have known that it had no consent to use NCBLE's Essay Examinations and that it had no consent to create and exploit the Infringing Works. BAR/BRI's infringement was willful.
26. BAR/BRI's infringements have damaged NCBLE and profited BAR/BRI, and the damage that is caused cannot be fully recompensed by money.

Count Two – Unfair and Deceptive Acts in Commerce

27. NCBLE prepares and administers the North Carolina Bar Examination, including the Essay Examination, which is an examination prepared and provided by law.
28. On information and belief, BAR/BRI, without authority of NCBLE, bought, received, sold, or gave, and/or offered to buy, give, or sell, copies of Essay Examination questions, in violation of N.C.G.S. §14-401.1.

29. On information and belief, BAR/BRI claimed and continues to claim, on materials it distributed and is distributing that incorporate Infringing Works, that it owns the copyright in those Infringing Works; and at least its predecessor in interest on information and belief filed applications to register its falsely claimed copyright in Infringing Works.
30. On information and belief, BAR/BRI has falsely designated the origin of the Infringing Works and falsely passed off the Infringing Works as its own, and continues to do so.
31. BAR/BRI is engaged in commerce in North Carolina, has carried out its unlawful activities in North Carolina, and its other unlawful activities with respect to the Essay Examination and its essay questions, as set out hereinabove, have caused harm to NCBLE in North Carolina, as well as to applicants to the North Carolina bar, while resulting in substantial profit to BAR/BRI, all in violation of N.C.G.S. §75-1.1 *et seq.*

Prayer for Relief

WHEREFORE, NCBLE demands trial by jury and prays that this Court award judgment in its favor and that it:

1. Permanently enjoin Defendants and their officers, directors, principals, agents, servants, employees, subsidiaries, successors and assigns from
 - a. infringing NCBLE's copyrights in its bar examination materials, including essay questions; or
 - b. passing off to the public, or advertising or promoting in any way, that their bar preparation materials are based upon or contain genuine North Carolina Bar Examination essay questions or close representations thereof; or
 - c. registering copyrights in their name in works that are not entirely their own, including works that infringe the copyrights of NCBLE.
2. Direct Defendants to pay to NCBLE all damages sustained by NCBLE as a result of the conduct complained of herein, including not only the wrongful conduct committed directly by Defendants and their predecessors in interest but also the infringements by non-parties for

- which Defendants are contributorily or vicariously liable, and to account for all gains, profits, savings, and advantages derived by Defendants and their predecessors in interest as a result of the wrongful conduct complained of herein; or, in lieu of an award of actual damages arising from the copyright infringements complained of herein, to award, at NCBLE's election, statutory damages pursuant to 17 U.S.C. §504(b), which NCBLE requests be set at \$150,000 for each act of willful infringement.
3. Direct Defendants to pay NCBLE's costs of this action and its reasonable attorneys' fees as provided by law.
 4. Award to NCBLE such other and further relief as to the Court seems just and proper.

This the 8th day of June, 2007.

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